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OGC Has Reviewed

22 September 1955

MEMORANDUM FOR: Special Support Assistant to the Deputy
Director (Support)

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SUBJECT: Termination of Contract Agent [redacted]

1. A file of correspondence on the subject was received by this Office on 1 September 1955 with a request that we render an opinion as to the legality of the settlement proposed by the Chief, German Mission.

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2. The file indicates that [redacted] was advised by cable, concurred in by the necessary senior Agency officials, to accept [redacted] resignation and that Headquarters would consider for approval a financial settlement which in [redacted] judgment was the best obtainable considering germane security, operational and future potentiality factors. [redacted] has proposed a settlement which recognizes that [redacted] owes the Agency a total of [redacted] and would credit [redacted] with [redacted] for a net difference, to be paid [redacted], of approximately [redacted].

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3. In computing the amounts to be credited [redacted], four items were taken into consideration. The first is an item of withheld salary and authorized expenses. There is no question in our view of the legality and propriety of crediting this amount as an offset against the money owed by [redacted] to the Agency. The second item proposed that [redacted] be credited with an amount roughly equivalent to that which would have been paid for the expenses of transporting his children and household effects. In our opinion there is no legal basis for crediting [redacted] with this amount unless these expenses were actually incurred under his contract. The third and fourth items would require retroactive action to adjust a special living allowance and to authorize a utilities allowance. In our opinion there is no legal basis for crediting or paying such retroactive amounts as they are in the nature of gratuities for which there is no legal consideration. We believe, therefore, that these amounts should not be used as a basis for settling [redacted] accounts.

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4. It would appear, therefore, that looking at the simple legalities of a situation without regard to extraneous circumstances, the obligation of [redacted] to the Government could be

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reduced only by the amount of salary and authorized expenses. We would normally be of the opinion that collection action should be taken for the remainder due the Government. We are, however, well aware that security or operational circumstances may bar effective collection action and justify a write off of the claim against an individual. In the case of a termination, however, we have not heretofore come across circumstances which would justify not only a write off of the Government's claim but also an additional payment to the individual, which in this case would be approximately [redacted]

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5. We believe that if it is administratively determined that security or operational requirements, or both, prevent collection of amounts due the Government, there is no legal objection to a write off of all or such parts of [redacted] obligation remaining after proper credits as may be deemed appropriate. We have no information which would justify payment of any additional sum to [redacted] after such a write off, although it is conceivable that some operational potential not known to us would support such action. If so, it should be approved on that ground and in an amount related to that potential, not on the basis of administrative actions we believe to be legally unsupportable. If this is done, it should be understood that any such additional sum should not be considered as a separate item but would be added to the write off of [redacted] which is the difference between [redacted] total obligation and the amount properly to be credited to him.

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LAWRENCE H. HOUSTON
General Counsel



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